

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

AVOCHON T. POSTELL

§

VS.

§

CIVIL ACTION NO. 1:08cv596

UNITED STATES OF AMERICA

§

ORDER ADOPTING THE MAGISTRATE
JUDGE'S REPORT AND RECOMMENDATION

Avochon T. Postell, proceeding *pro se*, filed the above-styled lawsuit. Plaintiff asserts claims against the United States pursuant to the Federal Tort Claims Act, as well as civil rights claims against D. Haven and Ms. Cole. Plaintiff also asserts a claim against Mr. Church, a fellow inmate.

The court previously referred this matter to the Honorable Keith F. Giblin, United States Magistrate Judge, for consideration pursuant to 28 U.S.C. § 636 and applicable orders of this court. The Magistrate Judge has submitted a Report and Recommendation of United States Magistrate Judge recommending that the claims against defendants Haven and Cole be dismissed without prejudiced for failure to exhaust administrative remedies.

The court has received and considered the Report and Recommendation of United States Magistrate Judge, along with the record and pleadings. No objections were filed to the Report and Recommendation.


ORDER

Accordingly, the findings of fact and conclusions of law of the Magistrate Judge are correct and the report of the Magistrate Judge is **ADOPTED** as the opinion of the court. The claims against defendants Dehaven and Cole are **DISMISSED** without prejudice for failure to exhaust administrative remedies.

The claims against the United States, as well as the claims against defendant Church involves different legal issues, as well as somewhat different factual issues. As a result, the court is of the

opinion that these claims should be severed from this lawsuit and proceed as separate lawsuits. Accordingly, the claims against the United States and defendant Church are **SEVERED** from this action and will each proceed as a separate civil action. The Clerk of Court is directed to assign a separate civil action number to the claims against the United States and a separate civil action number to the claims against defendant Church. The resulting new actions shall be assigned according to the regular practice for allowment of newly-filed civil actions. A final judgment shall be entered dismissing this lawsuit.

SIGNED this the **5** day of **January, 2016**.


Thad Heartfield
United States District Judge